

FILED

JUN 24 2004

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLOMBIA

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

Oliverio Alberto Perry-Torres,  
Residing in Colombia  
Plaintiff,

vs.

U.S. Department of State,  
Residing in Washington, D.C.

Defendant.

CASE NUMBER 1:04CV01046

JUDGE: Richard J. Leon

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 06/24/2004

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, to order an in camera inspection if necessary, and the production of the five documents totally ten pages of withheld material and all excised material released regarding the Office of Visa Services of Plaintiff, Mr. Oliverio Alberto Perry-Torres, FOIA No. 200104328, that defendant, the U.S. Department of State improperly classified as exempt from FOIA's requirements of disclosure.

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this action pursuant to 5 U.S.C. Section 552 (a) (4) (B). Venue is proper in this Court.

PARTIES

2.

Plaintiff is a sixty-eight year-old man who is a citizen and national of Colombia. He is the requester of the withheld records and excised information.

3.

Defendant, U.S. Department of State is an agency of the United States and it may have possession and control over the records and information that plaintiff seeks. The files plaintiff seeks were created by U.S. Department of State, Office of Visa Services.

FACTUAL ALLEGATIONS

4.

Mr. Perry-Torres is a citizen and national of Colombia. On several occasions, Mr. Perry-Torres has applied to the U.S. Embassy in Bogota, Colombia for a visitor's visa in order to be able to enter the United States and visit with his daughter who lives in the State of Georgia. Each time, the U.S. Embassy has denied his visa pursuant to Immigration and Nationality Act ("INA") § 212(a)(2)(A) or (C); 8 U.S.C. § 1182 (a)(2)(A) or (C). This section of law refers to individuals with criminal convictions.

5.

Mr. Perry-Torres has never been arrested or convicted of any crimes in Colombia or anywhere else in the world. He has no criminal history.

6.

By letter dated December 6, 2001, Mr. Perry-Torres requested access to any and all contents of his U.S. Department of States file. See Exhibit 1. A receipt letter was sent by the U.S. Department of States on December 11, 2001. See Exhibit 2.

8.

By letter dated October 31, 2002, Mr. Perry-Torres finally received a response to his request signed by Angela M.D. Williams, Office of IRM Programs and Services. This response by Ms. Williams contained a letter dated September 9, 2002 signed by Catherine Barry, Acting Deputy Assistant Secretary for Visa Services. The letter signed by Ms. Barry stated that Mr. Perry-Torres' U.S. Department of State file contained five documents totaling ten pages. All ten pages were withheld. See Exhibit 3. The letter by Ms. Williams stated that there was an ongoing search for documents at the U.S. Embassy in Bogotá, Colombia.

9.

On December 18, 2002, Mr. Perry-Torres appealed the decision of the U.S. Department of States to withhold information. See Exhibit 4.

10.

On December 23, 2002, U.S. Department of State acknowledged receipt of Mr. Perry-Torres' appeal. See Exhibit 5. On April 9, 2003, the U.S. Department of State Appeals Review Panel denied Mr. Perry-Torres' appeal stating that they must continue to withhold the five documents. See Exhibit 6.

11.

Plaintiff has a right of access to the requested information under 5 U.S.C. Section 552(a)(3).

12.

The U.S. Department of States improperly classified the withheld records and excised information as exempt from FOIA's disclosure requirements. There is no legal basis for the defendant's refusal to disclose them.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that this Court,

1. Require defendant to produce a Vaughn Index of the withheld records and excised information;
2. Conduct an *in camera* inspection of the withheld records and excised information to determine the propriety of the defendants claims of exemption;
3. Declare defendant's refusal to disclose the records requested by Mr. Perry-Torres unlawful;
4. Order defendant to make the requested records available to Mr. Perry-Torres;
5. Award Mr. Perry-Torres his costs and reasonable attorneys fees in this action pursuant to 5 U.S.C. §552(a)(4)(E) or other applicable laws; and
6. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23<sup>rd</sup> day of June, 2004,

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